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Paper No. 5

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MAY 28 2002

In re Application of
Rock, et al.
Application No. 09/982,720
Filed: October 18, 2001
Attorney Docket No.: 10638-025001
For: DOUBLE-FACE VELOUR FABRIC
ARTICLES HAVING IMPROVED DYNAMIC
INSULATION PERFORMANCE

: **OFFICE OF PETITIONS**
:
: **DECISION REFUSING STATUS**
: **UNDER 37 CFR 1.47(a)**
:
:

This is in response to the petition under 37 CFR 1.47(a), filed February 19, 2002.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed October 18, 2001 without an executed oath or declaration and naming Moshe Rock, Edward P. Dionne, Bhupesh Dua, Charles Haryslak, William K. Lie, and Douglas Lumb a joint inventors. Accordingly, on November 21, 2001, a "Notice to File Missing Parts of Nonprovisional Application" was mailed, requiring an executed oath or declaration, and a surcharge for its late filing. The instant petition was filed in response.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 USC 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

The petition lacks items (1) and (2) above.

As to item (1), the petition lacks sufficient evidence that the non-signing inventor cannot be reached, was ever presented with a copy of the application papers (specification, claims and drawings), or, having been presented with the application papers, refused to sign the oath or declaration.

The declaration of Felicia Siggins indicates that an envelope

containing, among other items, a copy of the a combined declaration and power of attorney was mailed to the inventor at the inventor's last known address and that the envelope was returned to sender as undeliverable.

Where inability to locate a non-signing inventor is alleged, diligent effort to locate the non-signing inventor must be undertaken. Petitioner is required to undertake additional effort to locate the non-signing inventor and provide the non-signing inventor with a complete copy of the patent application (specification, claims, and drawings). Details regarding attempts to locate the non-signing inventor should be submitted in the form of a declaration or affidavit by one having first hand knowledge of the information contained therein.

Petitioner should note that while the petition alleges the non-inventor is unavailable to sign the declaration at the non-signing inventor's last known address, a cursory review of the Lexis®.com EZFIND Combined Person Locator Nationwide database indicates the more current address and telephone number of the non-signing inventor to be as follows: 3216 NW Spencer Street, Portland, Oregon 97229-8053 and 503-296-6461.

As to item (2), an acceptable oath or declaration for the patent application in compliance with 37 CFR 1.63 has not been presented. The declaration presented with the instant petition is not acceptable as it has been improperly executed. Where it is alleged in a petition under 37 CFR 1.47(a) that an inventor cannot be located or refuses to sign the oath or declaration, the remaining inventors should sign the declaration in their own name and on behalf of the non-signing inventor. The signature block of the non-signing inventor should remain unexecuted. The assignee may not sign on behalf of the non-signing inventor where a petition under 37 CFR 1.47(a) is filed. See, MPEP 409.03(a). Petitioner is advised that any renewed petition should include a properly executed oath or declaration.

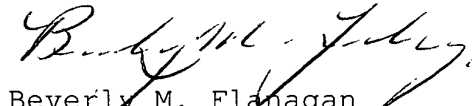
Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
Box DAC
Washington, DC 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA

Telephone inquiries related to this decision may be directed to Petitions Attorney Alesia M. Brown at (703) 305-0310.


Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions

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Office of the Deputy Commissioner
for Patent Examination Policy